

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rule making related to definition of “common ownership”

The Environmental Protection Commission (Commission) hereby amends Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 459.103.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 459.103.

Purpose and Summary

Pursuant to Chapter 5 and Iowa Code section 17A.7, the Iowa Pork Producers Association (IPPA) petitioned the Commission to amend the definition of “common ownership” as defined in rule 567—65.1(459,459B). IPPA proposed that the definition of “common ownership” be amended to replace the term “majority” with the phrase “10 percent or more.” IPPA contended in its petition that the amendment “is intended to promote continued environmentally responsible livestock production in compliance with all applicable law by ensuring that multiple limited liability companies or other business entity structures with the same owners cannot be used for the purpose of avoiding environmental regulation by having all owners hold less than a majority, and none with a 10 percent or more, ownership interest with each company owning a different confinement feeding operation on the same farm.”

The Commission hereby agrees with this proposal and amends the definition of “common ownership” in rule 567—65.1(459,459B) to remove the word “majority” and replace it with “10 percent or more,” meaning that a person, business or any other ownership entity subject to Iowa Code chapter 459 would be considered a common owner (and hence a single animal feeding operation) if there is an ownership interest of 10 percent or more of two or more facilities located within the regulated separation distances of one another. The rule making will ensure that the ownership structures of confinement feeding operations are adequately addressed and that operations that should submit manure management plans and construction permits are doing so.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4689C**. A public hearing was held on October 29, 2019, at 1 p.m. in the auditorium of the Wallace State Office Building, Des Moines, Iowa. The meeting was attended by 15 individuals, 11 of whom provided oral comments. The Department of Natural Resources (Department) received approximately 150 written comments prior to the 4:30 p.m. October 29, 2019, deadline for public comments. The majority of the commenters were accepting of the rule, but did not think the rule went far enough. The majority of the comments requested that the rule-making petition either be denied and more extensive rule making be initiated or that the existing rule be expanded.

The Commission notes that this rule making is narrow in scope as a response to a specific rule-making petition. The Commission concurs with the petitioner that the amended definition of “common ownership” will ensure that the rapidly changing ownership structures of confinement feeding operations are adequately addressed and will guarantee that operations that should submit manure management plans and construction permits are doing so. This amended definition balances the interests of producers and the environment to ensure that adequate oversight is taking place at facilities that

should have manure management plans or construction permits. A summary of the comments and the responses is available from the Department upon request. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on December 17, 2019.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa. It is anticipated there may be a minimal increase in permit fees, indemnity fees, and compliance fees submitted to the Department because there may be more confinement feeding operations that are required to submit a manure management plan, a construction permit application, or both. There is no anticipated increase in costs to the Department associated with implementing the amendment. Department employees who currently oversee manure management plans and construction permits will continue to do so; no additional personnel would be needed. There will be a minimal impact to a few facilities each year that previously would not have been required to submit a manure management plan or construction permit application, but would now be required to do so because of the change in the definition. The increased expenses would include consulting costs, as well as permit, compliance and indemnity fees. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on February 19, 2020.

The following rule-making action is adopted:

Amend rule **567—65.1(459,459B)**, definition of “Common ownership,” as follows:

“*Common ownership*” means the ownership of an animal feeding operation as a sole proprietor, or a ~~majority~~ 10 percent or more ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ~~majority~~ ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. The following exceptions shall apply to this definition:

1. For an animal feeding operation structure constructed before February 19, 2020, “common ownership” means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The

majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

2. This definition shall not apply to a dry bedded confinement feeding operation which is subject to the common ownership requirements in Iowa Code section 459B.103(3) “a”(3).

[Filed 12/17/19, effective 2/19/20]

[Published 1/15/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.